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In the  
Texas Court of Criminal Appeals

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No. 14-19-00386-CR

In the Fourteenth Court of Appeals  
in Harris County, Texas

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**JUAN MACEDO**

*Appellant*

V.

**THE STATE OF TEXAS**

*Appellee*

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STATE'S BRIEF ON DISCRETIONARY REVIEW

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Pursuant to TEX. R. APP. P. 38.2(a)(1)(A), a complete list of the names of all interested parties is provided below.

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*Trial Judge:*

**Honorable Denise Bradley** — Presiding Judge

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## TO THE HONORABLE COURT OF CRIMINAL APPEALS OF TEXAS:

### STATEMENT OF THE CASE AND PROCEDURAL HISTORY

#### A JURY FOUND APPELLANT GUILTY OF MURDERING HIS WIFE

Appellant, Juan Macedo,<sup>1</sup> brought his wife, Maria Alvarado, to the hospital with a deadly gunshot wound to the head. Appellant was covered in blood. (RR2 at 151; RR4 at 36, 85). At first, appellant's story was that he was in the driver's seat of his van and his wife was in the front passenger seat. While he was driving and messing with the radio, he just heard a shot and immediately saw blood. (RR2 at 160-63; RR3 at 102-04, 120). Appellant seemed more concerned with re-parking his van than the condition of his wife. (RR2 at 155-57). A bloodied gun (from blood spatter, not smear) was on the floorboard on the backside of the driver's seat. (RR2 at 159-60; RR3 at 123, 129-36). After going to the station to give a statement, appellant's story eventually changed to his wife shot herself and the gun was bloodied because he moved the gun after he got to the hospital. (RR3 at 104-05, 133, 151; State's Exhibits 79 and 80). Appellant insisted it was not an accident. (RR3 at 147).

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<sup>1</sup> Appellant went by the name Vicente Luna and is frequently referred to that way throughout trial. (RR5 at 22).

Blood patterns in the car showed blood moved directionally from “right to left, slightly back to front” —from the passenger side to the driver’s side. (RR4 at 28-32). Blood stains and drops in the car indicated no one was sitting in the driver’s seat at the time of the gunshot, and that Alvarado was in the front passenger seat at the time she was shot. (RR4 at 32-36). Alvarado’s DNA profile could not be excluded as a contributor to the blood found inside the barrel of the gun found in the car. (RR4 at 122). Evidence also showed the bullet found in the car was shot from that gun. (RR4 at 142-43, 161). An inmate that housed next door with appellant testified appellant told him he pulled the gun from under the seat, shot his wife, and then drove her to the hospital. (RR4 at 197-99).

Alvarado’s father testified appellant mistreated his daughter. (RR5 at 17). He once found her crying and she told him appellant threatened her. (RR5 at 18). She did not suffer from depression, did not say goodbye or leave a note, and he did not believe she would ever kill herself. (RR5 at 18-19).

Alvarado’s 16-year-old son testified the night of his mother’s death, they all went to a wedding. (RR5 at 21-23). When they left the wedding, his parents started arguing in the car about going back to the wedding after dropping off the kids at home. (RR5 at 24-25). Appellant had been drinking and was mad. (RR5 at 24-25). Appellant later called him and told him his “mom’s dead.” (RR5 at 26). He knew his father to always carry a gun on him. (RR5 at 27). His mother was

scared of guns. (RR5 at 27). He believed his parents were not in a happy relationship because they fought all the time. (RR5 at 28). He remembers one New Year's Eve where his father put his head together with his mother's head, took out his gun, and said "they were both going to die" before he started kicking holes in the wall. (RR5 at 29). His mother never said anything to him that would indicate she would leave him or hurt herself. (RR5 at 30). A jury found appellant guilty of the murder of his wife. (CR at 12, 341).

#### PUNISHMENT EVIDENCE

During punishment, Alvarado's father testified he and his wife lived in the same house with appellant and Alvarado in California. (RR5 at 84). Once, while in California, appellant was arrested for "beat[ing]" his daughter after she called the police. (RR5 at 85). The State then offered State Exhibits 176 (certified copy of judgment of appellant's guilty plea and conviction with "Jane Doe" listed as the victim/complainant) and State's Exhibit 177 (certified copy of report with Maria Alvarado's name and birthdate as victim/complainant "Jane Doe" of that conviction) together into evidence. (Attached As Appendix). Appellant's counsel made a hearsay objection that was overruled:

[State]: Your Honor, at this time the State is offering State's Exhibits Numbers 176 and 177 into evidence. These are certified copies of judgments from the State of California. I'm tendering to defense counsel.

[Appellant's Attorney]: Your Honor, on 176 and 177, I'm going to object as to hearsay, Your Honor.

THE COURT: Are they certified copies?

[State]: They are, Judge.

THE COURT: Then the objections are overruled. State's Exhibits 176 and 177 are admitted.

(RR5 at 85-86). Referencing both documents together, the State had Alvarado's father testify, without objection, that "Jane Doe, who was the spouse of said defendant" in 2002 and referenced in State's Exhibit 176, was the "Victim" with the "name Alvarado, Maria, with [her date of birth]" referenced in State's Exhibit 177. (RR5 at 86-87).

Appellant's son also testified during punishment that not only did his father hit him with a horse whip, but hit his mom "all the time." (RR5 at 95). He testified to remembering a time when he was in the car with his mom and dad and his dad "started elbowing" his mom and she told him to stop it and she was "going to leave" him. His dad then said "if you're going to leave me, I'm going to crash the car and we're all going to die." (RR5 at 96). The jury assessed appellant's punishment at confinement for life. (CR at 349; RR5 at 108).

## APPEAL AND OPINION

On appeal, appellant argued the trial court erred in allowing State's Exhibit 177 into evidence when it contained hearsay statements from Alvarado. The State responded that (1) appellant did not properly preserve his argument because his global hearsay objection was to both admissible and non-admissible evidence and when an exhibit contains both admissible and inadmissible evidence, the burden is on the objecting party to specifically point out which portion of the proffered evidence is inadmissible under *Whitaker v. State*, 286 S.W.3d 355, 369 (Tex. Crim. App. 2009); (2) even assuming appellant properly preserved his argument, the evidence was permissible as relevant to sentencing under Article 37.07, Section 3(a)(1); and (3) error in its admission, if any, was harmless.

On September 15, 2020, the Fourteenth Court of Appeals, through Justices Jewell, Christopher, and Hassan, issued a published opinion finding (1) because appellant is only appealing State's Exhibit 177, and not State's Exhibit 176, too, his single "hearsay" objection to both exhibits preserved his objection without the State arguing what would have been admissible in the exhibit; (2) "if a police offense report (not included as part of a pre-sentence investigation) is offered into evidence during a jury punishment trial and the opponent objects on hearsay grounds, the proponent must establish the report's admissibility through a sponsoring witness or applicable hearsay exception" to determine its relevancy to

sentencing under Article 37.07, Section 3(a)(1); and (3) despite evidence that appellant shot his wife at point-blank range, and additional punishment evidence that he “beat” her, hit her “all the time,” and threatened her life, evidence that he kicked and bit her in 2002 might have pushed the jury to sentence him to the maximum punishment. The Fourteenth Court of Appeals then reversed and remanded appellant’s case for a new trial on punishment in a published opinion. See [Macedo v. State, 608 S.W.3d 342 \(Tex. App. —Houston \[14th Dist.\] 2020, pet. granted\)](#).

This Court granted review on the following issues:

State’s Exhibit 177 was Admissible Under Article 37.07, §3(a)(1) Because it was “Relevant to Sentencing” and the Fourteenth Court of Appeals Erred in not Being Guided by the Language of the Statute.

If State’s Exhibit 177 was Admitted in Error, the Fourteenth Court of Appeals Erred in Finding Appellant was Harmed When it Only Added Evidence that His 2002 Domestic Violence Conviction Involved Him Kicking and Biting His Wife.

## SUMMARY OF THE ARGUMENT

Prior to 1993, Article 37.07, Section 3(a) of the Code of Criminal Procedure allowed for evidence to be admitted as to any matter the court deems relevant to sentencing, including the prior criminal record of the defendant and his general reputation and character, so long “as permitted by the Rules of Evidence.” This Court interpreted this provision to grant the trial court great latitude in the admission of evidence deemed relevant, as long as its admission is otherwise “permitted by the Rules of Evidence.” See *Grunsfeld v. State*, 843 S.W.2d 521, 523 (Tex. Crim. App. 1992). In 1993, the Legislature responded to *Grunsfeld* and deleted the language “as permitted by the Rules of Evidence.” Guided by the language of the Legislature, Article 37.07, Section 3(a)(1) now only requires that evidence be about “any matter the court deems relevant to sentencing” and “notwithstanding Rules 404 and 405, Texas Rules of Evidence, any other evidence of an extraneous crime or bad act that is shown beyond a reasonable doubt by evidence to have been committed by the defendant or for which he could be held criminally responsible, regardless of whether he has previously been charged with or finally convicted of the crime or act.” The Fourteenth Court of Appeals erred in holding otherwise. Assuming, *arguendo*, the appellate court did err, appellant was not harmed by hearsay contained within a certified report indicating he plead guilty to kicking and beating his wife in 2002.

## FIRST ISSUE FOR REVIEW

ISSUE: Does Article 37.07, Section 3(a)(1) Allow for Admission of Evidence the Trial Court Determines is “Relevant to Sentencing” Without Requiring it to be Admissible under the Rules of Evidence?

### A. Article 37.07, Section 3(a)(1) Allows for Evidence on “Any Matter the Court Deems Relevant to Sentencing”

#### 1. Standard of Review

When interpreting statutes, the goal is to effectuate the collective intent or purpose of the legislators who enacted the legislation. *Boykin v. State*, 818 S.W.2d 782, 785 (Tex. Crim. App. 1991). The focus should be on the literal text of the statute in question and an attempt to discern the fair, objective meaning of the text at the time of its enactment because (1) the text of the statute is the law; (2) the text is the only definitive evidence of what the legislators had in mind when the statute was enacted into law; and (3) the Legislature is constitutionally entitled to expect that the Judiciary will faithfully follow the specific text that was adopted. *Id.* “Legislative intent isn’t the law, but discerning legislative intent isn’t the end goal, either.” See *Watkins v. State*, No. PD-1015-18, \_\_\_ S.W.3d \_\_\_, 2021 WL 800617, at \*4 (Tex. Crim. App. Mar. 3, 2021). The end goal is interpreting the text of the statute. See *State v. Mancuso*, 919 S.W.2d 86, 87 (Tex. Crim. App. 1996) (citing *Boykin*, 818 S.W.2d at 785 and TEX. CONST. art. II, § 1 for the proposition that “[i]t is



the duty of the Legislature to make laws, and it is the function of the Judiciary to interpret those laws.”).

In interpreting the text of the statute, it is presumed that every word in a statute has been used for a purpose and that each word, phrase, clause, and sentence should be given effect if reasonably possible. *State v. Rosenbaum*, 818 S.W.2d 398, 400–01 (Tex. Crim. App. 1991) (citing TEX. GOV’T CODE §§ 311.025(b), 311.026(a)); *State v. Hardy*, 963 S.W.2d 516, 520 (Tex. Crim. App. 1997). The focus is not solely upon a discrete provision and other statutory provisions are considered to harmonize provisions and avoid conflicts. *Watkins*, at \*4. When dealing with the passage of a particular act, the entire act is considered in determining the Legislature’s intent with respect to a specific provision. *Id.* A statute that has been amended is construed as if it had originally been enacted in its amended form, mindful that the Legislature, by amending the statute, may have altered or clarified the meaning of earlier provisions. *Powell v. Hocker*, 516 S.W.3d 488, 493 (Tex. Crim. App. 2017). “Time-honored canons of interpretation, both semantic and contextual, can aid interpretation, provided the canons esteem textual interpretation.” *Bank Direct Capital Fin., LLC v. Plasma Fab, LLC*, 519 S.W.3d 76, 84 (Tex. 2017). Statutory construction is a question of law that is reviewed de novo. *Ramos v. State*, 303 S.W.3d 302, 306 (Tex. Crim. App. 2009).

2. Article 37.07, Section 3(a) No Longer Requires Evidence Be “Permissible Under the Rules of Evidence” and Now Allows for Evidence During the Punishment Phase About “Any Matter the Court Deems Relevant to Sentencing”

Formerly, over 30 years ago, Article 37.07, Section 3(a) of the Texas Code of Criminal Procedure stated that evidence, so long as it is *permissible under the Rules of Evidence*, may be offered as to any matter the court deems relevant to sentencing, including the prior criminal record of the defendant and his general reputation and character. Act of May 29, 1989, 71st Leg., R.S., ch. 785, § 4.04, 1989 TEX. GEN. LAWS 3492; *Anderson v. State*, 901 S.W.2d 946, 950 (Tex. Crim. App. 1995). This Court interpreted this provision to grant the trial court great latitude in the admission of evidence deemed relevant, as long as its admission is otherwise *permitted by the Rules of Evidence*. See *Grunsfeld v. State*, 843 S.W.2d 521, 523 (Tex. Crim. App. 1992).

In 1993, the Legislature responded to *Grunsfeld* and amended Article 37.07, Section 3(a) and deleted the language “as permitted by the Rules of Evidence.” Act of May 26, 1993, 73rd Leg., R.S., ch. 900, § 5.05, 1993 TEX. GEN. LAWS 3759.<sup>2</sup> Article 37.07, Section 3(a)(1) now provides in relevant part:

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<sup>2</sup> A line was specifically drawn through the phrase “as permitted by the Rules of Evidence.” See [TEX. S.B. 1067, 73rd Leg., R.S. \(3759\)](https://legis.texas.gov/legis/Details.aspx?code=statutes&value=1067) ([https://lrl.texas.gov/scanned/sessionLaws/73-0/SB 1067 CH 900.pdf](https://lrl.texas.gov/scanned/sessionLaws/73-0/SB_1067_CH_900.pdf), last accessed Mar. 22, 2021).

Sec. 3. Evidence of prior criminal record in all criminal cases after a finding of guilty.

(a)(1) Regardless of the plea and whether the punishment be assessed by the judge or the jury, evidence may be offered by the state and the defendant as to any matter the court deems relevant to sentencing, including but not limited to the prior criminal record of the defendant, his general reputation, his character, an opinion regarding his character, the circumstances of the offense for which he is being tried, and, notwithstanding Rules 404 and 405, Texas Rules of Evidence, any other evidence of an extraneous crime or bad act that is shown beyond a reasonable doubt by evidence to have been committed by the defendant or for which he could be held criminally responsible, regardless of whether he has previously been charged with or finally convicted of the crime or act....

TEX. CODE CRIM. PROC. ANN. art. 37.07, § 3(a)(1).

“When the legislature amends a statute, we presume the legislature meant to change the law, and we give effect to the intended change.” *Brown v. State*, 915 S.W.2d 533, 536 (Tex. App. —Dallas 1995), *aff’d* 943 S.W.2d 35 (Tex. Crim. App. 1997) (citing *Cook v. State*, 824 S.W.2d 634, 643 (Tex. App. —Dallas 1991, pet. ref’d)); *see also Lafayette v. State*, 835 S.W.2d 131, 134 (Tex. App. —Texarkana 1992, no pet.) (“In construing a statute, we must presume that all of the language employed by the Legislature has a meaning and purpose.”). “We also presume the legislature was aware of all caselaw affecting or relating to the statute.” *Brown*, 915

S.W.2d at 536 (citing *Grunsfeld*, 843 S.W.2d at 523). Moreover, it is presumed that the Legislature chose its words carefully, recognizing that every word in a statute was included for some purpose and that every word excluded was omitted for a purpose. See *Ex parte Santellana*, 606 S.W.2d 331, 333 (Tex. Crim. App. 1980).

In *Smith v. State*, 227 S.W.3d 753 (Tex. Crim. App. 2007), this Court again discussed the 1993 changes to Article 37.07, Section 3(a), and while again not addressing the deletion of “as permitted by the Rules of Evidence,” discussed the Legislature’s expansion in allowing misconduct evidence during punishment, “while at the same time placing a conditional limitation upon any misconduct evidence that has not become a part of the defendant’s prior criminal record:”

[T]he Legislature expressly provided that, notwithstanding provisions in the Texas Rules of Evidence governing the admissibility of extraneous bad acts generally, a trial court may permit the introduction of “any other evidence of an extraneous crime or bad act[,]” regardless of whether it has resulted in a criminal conviction. But this express authority of the trial court to admit evidence of any extraneous offense it deems relevant to sentencing is not unconditional. The extraneous offense must be “shown” by the proponent of the evidence (usually the State) “beyond a reasonable doubt ... to have been committed by the defendant,” or that “he could be held criminally responsible, regardless of whether he has previously been charged with or finally convicted of the crime or act.”

*See id.* at 759-60 (footnote citations omitted).

In *Sims v. State*, 273 S.W.3d 291 (Tex. Crim. App. 2008), this Court discussed the significance of the Legislature’s chosen words under Article 37.07, Section 3(a)(1) as it applies to the relevance of evidence during the punishment phase:

Article 37.07, § 3(a)(1) allows for admission of any evidence the trial court “deems relevant to sentencing.” The Legislature has expressly provided that “relevant” punishment evidence includes, but is not limited to, both character evidence in the form of opinion testimony as well as extraneous-offense evidence. Because there are no discrete fact issues at the punishment phase of a non-capital trial, we have ruled that the definition of “relevant,” as stated in Rule 401 of the Texas Rules of Evidence, does not readily apply to Article 37.07. What is “relevant” to the punishment determination is simply that which will assist the fact finder in deciding the appropriate sentence in a particular case. When the jury assesses punishment, it must be able to tailor the sentence to the particular defendant, and relevance is simply “a question of what is helpful to the jury in determining the appropriate sentence for a particular defendant in a particular case.”

*Id.*, at 295 (Tex. Crim. App. 2008). While this Court recognized the Legislature’s express conditions on extraneous evidence admissible in sentencing under Article 37.07, Section 3(a)(1), it is also significant to note that the Legislature was aware

of this Court's holding in *Grunsfeld* and carefully chose to exclude, by drawing a line through the phrase, "as permitted by the Rules of Evidence" as a continued condition when it amended Article 37.07.

"When determining the admissibility of evidence under article 37.07, a court must be guided by the language of its provisions." *Haley v. State*, 173 S.W.3d 510, 514 (Tex. Crim. App. 2005); see also ANTONIN SCALIA & BRYAN A. GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* (West 2012). The language of Article 37.07, Section 3(a)(1) states the State may offer evidence "as to any matter the court deems relevant to sentencing." See TEX. CRIM. PROC. CODE ANN. art. 37.07, § 3(a)(1). Guided by the language of the Legislature, Article 37.07, Section 3(a)(1) no longer requires evidence be "as permitted under the Rules of Evidence" and only requires that evidence be about "any matter the court deems relevant to sentencing" and "notwithstanding Rules 404 and 405, Texas Rules of Evidence, any other evidence of an extraneous crime or bad act that is shown beyond a reasonable doubt by evidence to have been committed by the defendant or for which he could be held criminally responsible, regardless of whether he has previously been charged with or finally convicted of the crime or act."

The Fourteenth Court of Appeals rejected the State's argument that the deletion of "as permitted by the Rules of Evidence" was intentional and changed

the application of Article 37.07, Section 3(a)(1). The appellate court relied on over a half-a-dozen cases that all failed to address the issue in this case and that can be distinguished. The court started off with noting that this Court has addressed Article 37.07, Section 3(a)(1) two times since the legislative changes in 1993, citing *Ellison v. State*, 201 S.W.3d 714, 721-22 (Tex. Crim. App. 2006) and *Smith v. State*, 227 S.W.3d 753, 759-60 (Tex. Crim. App. 2007).<sup>3</sup> See *Macedo*, 609 S.W.3d at 348. In *Ellison*, while this Court addressed the legislative changes to Article 37.07, Section 3(a)(1), it did not acknowledge or address the deletion of the language “as permitted by the Rules of Evidence,” and this Court noted “the trial judge must still restrict the admission of evidence to that which is ‘relevant to sentencing’ — in other words, a trial judge must operate within the conditional bounds of Texas Rules of Evidence 401, 402, and 403” (thus allowing for exclusion “under some other statute or rule,” and not, as the appellate court interpreted the statement, *all*

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<sup>3</sup> In *Mitchell v. State*, 931 S.W.2d 950, 952 (Tex. Crim. App. 1996), a plurality of this Court also addressed the 1993 changes to Article 37.07, Section 3(a)(1) and the relationship between extraneous offenses admitted at guilt-innocence and those admitted at punishment. This Court stated “the Texas Legislature determined that evidence as to any matter may be offered during the punishment phase of a trial if the trial court deems it relevant to sentencing.” While this Court did not specifically address the deletion of the phrase “as permitted by the Rules of Evidence,” this Court also noted that the Legislature “determined that evidence of extraneous crimes or bad acts are admissible subject to certain conditions being met.” See *id.* at 952.

rules of evidence).<sup>4</sup> *See id.*, 201 S.W.3d at 718-21. In dicta in *Smith*, this Court, while addressing what the Legislature intended regarding Article 37.07, Section 3(d) (contents of a PSI) and if a “trial court may consider extraneous misconduct that is not proven to have been committed by the defendant beyond a reasonable doubt,” stated “[t]he Legislature could have believed that, were the question to come squarely before us, we would likely construe Section 3(d) to allow the trial court to consider unadjudicated extraneous misconduct if it is contained in a PSI, even though he could not consider it if only offered into evidence at a formal punishment hearing under Section 3(a).” *See id.*, 227 S.W.3d at 763.

Neither *Ellison* nor *Smith* (nor *Mitchell v. State*, 931 S.W.2d 950, 953 (Tex. Crim. App. 1996)) addressed the deletion of the language “as permitted by the Rules of Evidence.”<sup>5</sup> Not one of the cases cited by the appellate court addressed the

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<sup>4</sup> After finding the probation officer’s testimony on defendant’s suitability for community supervision relevant under Article 37.07, Section 3(a)(1), this Court then decided the probation officer was qualified under Rule 701. Again, this Court did not acknowledge or address the deletion of the language “as permitted by the Rules of Evidence” and ultimately held it could not say “that the trial judge abused his discretion in allowing the probation officer to testify as to her opinion of Ellison’s suitability for community supervision.” *See Ellison*, 201 S.W.3d at 723.

<sup>5</sup> The other courts cited by the Fourteenth Court of Appeals, too, never addressed the significance of the deletion of the “as permitted by the Rules of Evidence:” in *Castor v. State*, Nos. 01-18-00148-CR & 01-18-00149-CR, 2018 WL 6205891, at \*4-6 (Tex. App.—Houston [1st Dist.] Nov. 29, 2018, no pet.) (mem. op., not designated for publication),



Legislature’s intent in deleting the phrase “as permitted by the Rules of Evidence” and what that means to the admissibility of evidence in sentencing. The appellate court, however, looked at these cases and decided they were authority to conclude that not only is the absence of “as permitted by the Rules of Evidence” meaningless, but so is the deletion of the language by the Legislature.<sup>6</sup>

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Article 37.07, Section 3(a)(1) was not argued and the First Court of Appeals did not address it; in *Patterson v. State*, 508 S.W.3d 432, 436-37 (Tex. App.—Fort Worth 2015, no pet.), the appellate court relied on *Ellison* and never references Article 37.07, Section 3(a)(1); in *Hernandez v. State*, No. 08-13-00277-CR, 2015 WL 5260887, at \*5 (Tex. App.—El Paso Sept. 9, 2015, no pet.) (mem. op., not designated for publication), the appellate court cites to Rule 403 and *Ellison* in determining if evidence is relevant to sentencing, and did not hold all rules of evidence apply to sentencing; in *Santos v. State*, No. 13-13-00110-CR, 2013 WL 6175183, at \*1 (Tex. App.—Corpus Christi Nov. 21, 2013, no. pet.) (mem. op., not designated for publication), Article 37.07, Section 3(a)(1) was not argued or addressed and error was conceded by the State; In *Dixon v. State*, 244 S.W.3d 472, 481-85 (Tex. App.—Houston [14th Dist.] 2007, pet. ref’d), the appellate court did not address Article 37.07, Section 3(a)(1); in *Panchol v. State*, No. 02-12-00228-CR, 2013 WL 3874763, at \*6 (Tex. App.—Fort Worth July 25, 2013, pet. ref’d) (mem. op., not designated for publication), the appellate court found non-hearsay evidence specifically admissible under the language in Article 37.07, Section 3(a)(1), but the State strayed into admissible evidence that was not “ ‘shown beyond a reasonable doubt by evidence to have been committed by the defendant or for which he could be held responsible;’ ” and in *Spikes v. State*, No. 09-00-00320-CR, 2002 WL 1478540, at \*2 (Tex. App.—Beaumont July 10, 2002, no pet.) (not designated for publication), the appellate court found general reputation evidence admissible under Article 37.07, Section 3(a)(1) and TEX. R. EVID. 803(21). See *Macedo*, 609 S.W.3d at 348.

<sup>6</sup> By holding they “conclude that if a police offense report (not included as part of a pre-sentence investigation) is offered into evidence during a jury punishment trial and the opponent objects on hearsay grounds, the proponent must establish the reports

Guided by the language of the Legislature, Article 37.07, Section 3(a)(1) only requires that evidence be about “any matter the court deems relevant to sentencing” and “notwithstanding Rules 404 and 405, Texas Rules of Evidence,

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admissibility through a sponsoring witness or applicable hearsay exception.” *See Macedo*, 609 S.W.3d at 349. Admittedly, the State, here, called both documents “certified judgments” when they were being offered into evidence during Alvarado’s father’s testimony, as he was being asked specifically about what he knew about appellant’s California conviction while the State was trying to prove the victim in that case was the same victim in this case. It was then that appellant lodged his global “hearsay” objection to both documents. After the trial court asked if the documents were certified, and the State responded affirmatively, which was true, the court overruled appellant’s objection. (RR5 at 86). The appellate court cites to no authority that required the State to volunteer how hearsay is admissible once the trial court overrules the objection. The State, however, is aware that Rule 803(6) would require it if the State was offering it as a record of regularly conducted business activity. *See* TEX. R. EVID. 803(6). The State did not offer into evidence under Rule 803(6), nor did appellant object under Rule 803(6). If the State, as here, was offering it during sentencing purely as a document containing some hearsay, but otherwise “relevant to sentencing,” the State is unaware of any burden to demonstrate its admissibility through a sponsoring witness. Should the appellate court’s comment be interpreted to be alluding to *Crawford*, the appellate court never addressed it, although appellant argued his trial counsel was ineffective for failing to lodge a *Crawford* objection. Relying on *Boykin v. Alabama*, 395 U.S. 238 (1969), the State responded his trial counsel was not ineffective because, here, the judgment of conviction, State’s Exhibit 176, shows appellant waived his right to confront Alvarado regarding the accusations she made in the police report when he entered a plea of guilty. Based upon the certified copy of the predicate conviction, the State met its burden of showing appellant was advised of his rights to confrontation and cross-examination during the prior guilty plea and he waived those rights under that issue. Because Alvarado was unavailable (because she was deceased), and because appellant had a prior opportunity to cross-examine her about the report she made to the officers when he pled guilty to the offense, the State met its burden of showing appellant was advised of his rights to confrontation and cross-examination during the prior guilty plea and he waived those rights.

any other evidence of an extraneous crime or bad act that is shown beyond a reasonable doubt by evidence to have been committed by the defendant or for which he could be held criminally responsible, regardless of whether he has previously been charged with or finally convicted of the crime or act.” The Fourteenth Court of Appeals erred in holding otherwise.

#### **B. The Trial Court Did Not Abuse It’s Discretion in Deeming the Evidence Relevant to Appellant’s Sentencing**

Section 3(a)(1) of Article 37.07 of the Code of Criminal Procedure allows evidence during the punishment phase about “any matter the court deems relevant to sentencing.” TEX. CODE CRIM. PROC. ANN. art. 37.07, § 3(a)(1). When a jury determines punishment, the trial court first determines the threshold issue of admissibility of relevant evidence, but the jury, as the finder of fact, determines whether the extraneous offenses were proven beyond a reasonable doubt. *See Mitchell*, 931 S.W.2d at 953. “[T]he trial judge must still restrict the admission of evidence to that which is ‘relevant to sentencing’—in other words, a trial judge must operate within the bounds of Texas Rules of Evidence 401, 402, and 403.” *Ellison*, 201 S.W.3d at 722. “Determining what is relevant then should be a question of what is helpful to the jury in determining the appropriate sentence for a particular defendant in a particular case.” *Rogers v. State*, 991 S.W.2d 263, 265 (Tex. Crim. App. 1999). While the Code of Criminal Procedure does not

specifically define the term “relevant,” Article 37.07, Section 3(a)(1) provides that evidence “relevant to sentence” includes, but is not limited to: (1) the prior criminal record of the defendant; (2) the defendant’s general reputation; (3) the defendant’s character; (4) an opinion regarding the defendant’s character; (5) the circumstances of the offense being tried; and (6) notwithstanding Texas Rules of Evidence 404 and 405, any other evidence of an extraneous crime or bad act that is shown beyond a reasonable doubt by evidence to have been committed by the defendant or for which the defendant could be held criminally responsible, regardless of whether the defendant has previously been charged with or finally convicted of the crime or act. *See* TEX. CRIM. PROC. CODE ANN. art. 37.07, § 3(a)(1). “Texas Rule of Criminal Evidence 401 is helpful to determine what should be admissible under article 37.07 section 3(a).” *See Rogers*, 991 S.W.2d at 265; TEX. R. EVID. 401, 402.

Rule 403 states that relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. TEX. R. EVID. 403. Even if punishment evidence is otherwise admissible under article 37.07, it may be excludable under Rule 403. *See Rogers*, 991 S.W.2d at 266 (applying Rule 403 and emphasizing that “it is unfair prejudice that must substantially outweigh the probative value of the evidence to render relevant evidence inadmissible”). A Rule 403 analysis should include, but is not limited to, considering the probative value

of the evidence; the potential of the evidence to impress the jury in some irrational, indelible way or to suggest a decision on an improper basis; the time the proponent needs to develop the evidence; and the proponent's need for the evidence. *Reese v. State*, 33 S.W.3d 238, 240–41 (Tex. Crim. App. 2000); *see Gigliobianco v. State*, 210 S.W.3d 637, 641 (Tex. Crim. App. 2006).

Here, State's Exhibit 177, a certified copy of a report with Maria Alvarado's name and birthdate, was introduced to show Alvarado was the "Jane Doe" listed as the victim/complainant in the certified copy of judgment of appellant's guilty plea and conviction shown in State's Exhibit 176. (See Appendix). Evidence showing appellant's history of abusing Alvarado was relevant because it helped define appellant's character for the jury; showed another example of a criminal act that appellant committed against Alvarado; and helped strengthen the establishment of a pattern of serious, continuing abuses. The information in the document was relevant to assist the trier of fact in determining the appropriate sentence for appellant. *See Gigliobianco*, 210 S.W.3d at 641.; *Sims*, 273 S.W.3d at 295; *Ellison*, 201 S.W.3d at 719; *see also McClure v. State*, 269 S.W.3d 114, 120 (Tex. App. —Texarkana 2008, no pet.) ("A person's history of violating the law is undoubtedly a relevant factor for a jury to consider when assessing a sentence because it relates to the defendant's character.") (holding after quoting *Sims*, 273 S.W.3d at 295, and this Court's definition of what is relevant to sentencing).

Although the report described an event that occurred approximately 20 years before the trial of Alvarado's murder, the report was made at the time of the abuse that it described, while the event was apparently fresh in Alvarado's mind. The State only used the report to show Alvarado was the victim of the 2002 conviction shown in State's Exhibit 176. Although the effect of the evidence on the jury may have been indelible, it was not irrational, given that the Legislature has expressly permitted evidence of even unadjudicated extraneous crimes and bad acts to allow juries to tailor appropriate punishments. *See* TEX. CODE CRIM. PROC. ANN. art. 37.07, § 3(a)(1); *see also Fowler v. State*, 126 S.W.3d 307, 311 (Tex. App. — Beaumont 2004, no pet.) (“Evidence of defendant's prior assaults certainly had a tendency to cause a jury to increase his punishment. But that was its legitimate purpose.”).

To the extent the trial court may have considered the probative value of the evidence, the court could have reasonably concluded that any unfair prejudice would be reduced by Alvarado's unavailability to testify after he murdered her, appellant's admission of committing the crime by entering a plea of guilty to it, and the trial court could have rationally considered that evidence of him biting and kicking her 20 years ago was more pertinent to assessing appellant's punishment while not unduly prejudicial. *See Gigliobianco*, 210 S.W.3d at 641. Because State's Exhibit 177 went hand-in-hand with State's Exhibit 176, because the information

within the document was relevant to sentencing, and because the probative value of the evidence is not outweighed by undue prejudice, the trial court did not abuse its discretion in overruling appellant's objection. *See* TEX. CODE CRIM. PROC. ANN. art. 37.07, § 3(a)(1). The Fourteenth Court of Appeals erred in finding State's Exhibit 177 inadmissible.

This Court should sustain the State's first issue.

## SECOND GROUND FOR REVIEW

ISSUE: Assuming Error, the Fourteenth Court of Appeals Erred in Finding Appellant was Harmed When the Evidence Only Added that His 2002 Domestic Violence Conviction Involved Him Kicking and Biting His Wife.

### A. Standard of Review

Non-constitutional error that does not affect an appellant's substantial rights is to be disregarded. TEX. R. APP. P. 44.2(b); *Garcia v. State*, 126 S.W.3d 921, 927–28 (Tex. Crim. App. 2004). An appellant's substantial rights are not affected by the erroneous admission of evidence if, after examining the record as a whole, there is a fair assurance that the error did not influence the verdict or had only a slight influence on the verdict. *Motilla v. State*, 78 S.W.3d 352, 355 (Tex. Crim. App. 2002); *see Garcia*, 126 S.W.3d at 927–28. In making this determination, the entire

record is considered, including the other evidence admitted in the case, the nature of the evidence supporting the factfinder's determination, the character of the alleged error and how it might be considered in connection with other evidence in the case, the State's theory, any defensive theories, closing arguments, and whether the State emphasized the error. *Motilla*, 78 S.W.3d at 355–56. When assessing error due to improperly admitted evidence during punishment, as here, the main inquiry is whether appellant received a longer sentence as a result of the erroneously admitted evidence. *Ivey v. State*, 250 S.W.3d 121, 126 (Tex. App.—Austin 2007) (affirming conviction because defendant had not demonstrated he received longer sentence or was harmed by admission of improper testimony), *aff'd*, 277 S.W.3d 43 (Tex. Crim. App. 2009).

#### **B. Appellant was Not Harmed by the Admission of State's Exhibit 177**

After finding the trial court abused its discretion in admitting State's Exhibit 177, the Fourteenth Court of Appeals found appellant was harmed, reversed the sentence, and remanded his case to the trial court for a new punishment hearing. Assuming the appellate court was correct in finding the trial court abused its discretion, evidence that appellant plead guilty to kicking and biting his wife in 2002 did not harm appellant.



The State did not have Alvarado's father testify about the hearsay within State's Exhibit 177, but referenced both documents together. The State had Alvarado's father testify, without objection, that "Jane Doe, who was the spouse of said defendant" in 2002 and referenced in State's Exhibit 176, was the "Victim" with the "name Alvarado, Maria, with a date of birth 7-23 of 1982" referenced in State's Exhibit 177. (RR5 at 86-87). Appellant's son also testified during punishment that not only did his father hit him with a horse whip, but hit his mom "all the time." (RR5 at 95). He testified to remembering a time when he was in the car with his mom and dad and his dad "started elbowing" his mom and she told him to stop it and she was "going to leave" him. His dad then said "if you're going to leave me, I'm going to crash the car and we're all going to die." (RR5 at 96).

During closing argument, however, the State referenced that the prior conviction involved appellant biting his wife. (RR5 at 104). And the document itself mentions he kicked her in the jaw. (State's Exhibit 177). The State argued to the Fourteenth Court of Appeals if evidence that appellant kicked and bit his wife years before was admitted in error, it had no effect or had "but a slight effect" in determining appellant's punishment given the nature of the crime itself and other evidence from two witnesses, Alvarado's son and father, that he "beat" her and threatened her life in the past.

The Fourteenth Court of Appeals disagreed and held:

Appellant's sentence of imprisonment for life was the maximum. To be sure, the jury may have considered such a harsh sentence amply justified given that it convicted appellant for murdering his wife by shooting her in the head at point-blank range, but we cannot say with fair assurance that the 2002 offense report in Exhibit 177 did not influence the jury or influenced the sentence only slightly, given that the State emphasized it in closing and the jury asked to see it before returning a verdict for the maximum sentence.

*See Macedo*, 609 S.W.3d at 350.

The range of punishment for the charged offense was five years to ninety-nine years or life. *See* TEX. PENAL CODE §§ 12.32, 19.02(c). The State sought punishment at life for appellant. (RR5 at 103). While true the jury assessed the punishment for murdering his wife at the maximum of life, the overwhelming evidence showed he shot her at “point-blank range,” lied and tried to claim it was a suicide, hit her “all the time,” once threatened to wreck the car and kill everyone in it, including his son, and once threatened to shoot his wife in front of his son. And appellant’s father-in-law testified, without objection, that appellant was arrested for beating her when they lived in California, the judgment of conviction of State’s Exhibit 176, in 2002.

Evidence that his wife reported that he kicked and bit her, which was the same “beat[ing]” and reason for his arrest in California that his father-in-law testified about with no objection, if error, had no effect or had “but a slight effect” in determining appellant’s punishment given both the history of his violence against Alvarado and the nature of her murder. *See Motilla*, 78 S.W.3d at 355–58 (reiterating that “overwhelming evidence” of guilt is one consideration in deciding whether improper admission of evidence was harmful in a particular case and an appellate court should examine the record as a whole when conducting a harm analysis). The Fourteenth Court of Appeals erred in finding appellant was harmed and this Court should sustain the State’s second ground for review.

## CONCLUSION

It is respectfully submitted that this Court sustain the State's issues and affirm appellant's conviction and punishment. Alternatively, the State respectfully requests this Court sustain the State's issues and remand this case to the Fourteenth Court of Appeals to address appellant's last issue on appeal.

**KIM OGG**  
District Attorney  
Harris County, Texas

*/s/ Bridget Holloway*

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## CERTIFICATE OF SERVICE AND WORD LIMIT COMPLIANCE

This is to certify: (a) that the word count of the computer program used to prepare this document reports that there are 6894 words in the document; and (b) that the undersigned attorney requested that a copy of this document be served to appellant's attorney and the State Prosecuting Attorney via TexFile at the following emails on March 22, 2021:

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## APPENDIX

State's Exhibits 176 and 177

UPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE, WEST JUSTICE CE

DV COURT

COMPLAINT

02WM 10743  
NO.

OCSO 02273656

"DOMESTIC VIOLENCE CASE"

2002 DEC 27 9:24

FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE  
WEST JUSTICE CENTER

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

JUAN MACEDO  
X4859246

3/8/82

AKA JUAN MACEDO ROMAN TN

Defendant(s)

The Orange County District Attorney charges that in Orange County, California, the law was violated as follows:

COUNT 1: On or about December 24, 2002, JUAN MACEDO, in violation of Section 273.5(a) of the Penal Code (CORPORAL INJURY - SPOUSE), a MISDEMEANOR, did willfully and unlawfully inflict a corporal injury resulting in a traumatic condition upon JANE DOE, who was the spouse of said defendant.

The People intend to proceed pursuant to Evidence Code Sections 1107, 1109 and 1370.

COUNT 2: On or about December 24, 2002, JUAN MACEDO, in violation of Section 243(e)(1) of the Penal Code (BATTERY AGAINST SPOUSE, COHABITANT, PARENT OF CHILD, NONCOHABITING FORMER SPOUSE, FIANCE, FIANCEE OR PERSON WITH A PRESENT OR FORMER DATING RELATIONSHIP), A MISDEMEANOR, did willfully and unlawfully commit battery against a spouse, cohabitant, parent of child, noncohabiting former spouse, fiance, fiancee or person with whom the defendant has or had a dating relationship.

The People intend to proceed pursuant to Evidence Code Sections 1107, 1109 and 1370.

COUNT 3: On or about December 24, 2002, JUAN MACEDO, in violation of Section 136.1(b)(1) of the Penal Code (ATTEMPT TO DISSUADE A WITNESS), a MISDEMEANOR, did knowingly and maliciously attempt to prevent and dissuade JANE DOE, a victim and witness of a crime, from making a report of that crime to a peace officer, law enforcement officer, probation, parole or correctional officer, prosecuting agency and judge.

RECEIVED 800-631-6889

STATE'S  
EXHIBIT

176

Misdemeanor Complaint

I declare under penalty of perjury, on information and belief, that the foregoing is true and correct.

Dated December 27, 2002 at Orange County, California.  
CV/LS 02W10067

TONY RACKAUCKAS, DISTRICT ATTORNEY

by *Ray D. Pena* Deputy  
Complainant

Restitution Claimed

Bail Recommendation - \$ 10,000

☐ None

☐ \$ \_\_\_\_\_

☐ To Be Determined

NOTICE TO DEFENDANT AND ATTORNEYS FOR THE DEFENSE:

The People request that defendant and counsel disclose, within 15 days, all of the materials and information described in Penal Code Section 1054.3, and continue to provide any later-acquired materials and information subject to disclosure, promptly, and without further request or order.



**DOMESTIC VIOLENCE**

**DEFENDANT'S WAIVER OF CONSTITUTIONAL RIGHTS FOR GUILTY PLEA TO MISDEMEANOR**

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
WEST JUSTICE CENTER

DEFENDANT'S NAME Juan Macedo Roman COURT CASE NO. 02WM DE 293002  
DEFENDANT: READ the following. If you understand and agree to each provision, INITIAL each box, and DATE and SIGN at the end.

1. I understand that I am charged with the offense(s) of 273.5 PC, 243(c)(1)(B), 261(a)(2)(B) to which I plead guilty. Jb
2. I understand I have violated this section by committing the following (factual basis) On 12-24-02 in O.C. I willfully & unlawfully inflicted corporal injury upon my spouse which resulted in a traumatic condition & prevented her from reporting the crime. Jb
3. I understand that the maximum penalty for this offense is confinement in the county jail and/or a fine as shown:
 

Jail	Fine	Jail	Fine	Jail	Fine
Ct. 1 <u>1yr</u>	<u>\$16000</u>	Ct. 3 <u>1yr</u>		Ct. 5	
Ct. 2 <u>Dismiss</u>		Ct. 4		Ct. 6	

Jb
4. I understand each of the following rights, and hereby voluntarily, intentionally and with full knowledge give up each and all of them, as indicated:
  - (a) To be represented by an attorney of my own choice at all stages of the proceedings, or if I cannot afford an attorney, to have the Court appoint one to represent me, free of charge subject to the Court's requirement that I pay the cost thereof at the conclusion of these proceedings based upon my financial ability. Jb?
  - (b) To a speedy trial, that is: within 30 days of my arraignment if I am in custody, or within 45 days thereof if I am not in custody and to a dismissal of the charges against me if I am not so tried. Jb
  - (c) To a public trial by jury. Jb
  - (d) To subpoena witnesses for my defense without expense to me. Jb
  - (e) To confront the witnesses against me in trial and to cross-examine them myself or through my attorney. Jb
  - (f) To testify in my own defense, or to remain silent if I so desire and to thereby refuse to give evidence that may be used against me. Jb
  - (g) To be sentenced in not less than 6 hours or more than 5 days from the time of my plea of guilty. Jb
  - (h) To appeal the denial of my Penal Code Section 1538.5 motion (suppression motion) even after pleading guilty. Jb
5. I understand the nature of the charges against me, the elements of the crime that I am pleading guilty to, and the other available pleas and defenses and enter a plea of guilty. Jb
6. I understand that if I receive probation and violate any of the terms of my probation grant, I may be returned to court and sentenced on this charge as set forth in paragraph 3 above. Also, if I am presently on probation for any previous convictions, I understand that my plea of guilty may cause me to be in violation of my other probation, and result in additional penalties and/or punishments. Jb
7. I understand that if I am not a citizen of the United States the conviction for the offense charged may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization or amnesty pursuant to the laws of the United States. Jb
8. I understand that under the Fourth and Fourteenth Amendments to the United States Constitution, I have a right to be free from unreasonable searches and seizures. I hereby waive and give up this right, and further agree for the period during which I am on probation or parole, to submit my person and property, including any residence, premises, container or vehicle under my control to search and seizure at any time of the day or night by any law enforcement, parole, or probation officer with or without a warrant, and with or without reasonable cause or reasonable suspicion. Jb



9. I understand the following initial sentence will be recommended and if it is not so imposed, that I may withdraw my plea.

- (a) I.S.S., 3 years of informal/formal (circle) probation, violate no laws (1203.097 (a) (1) P.C.). Jah
- (b) ☒ Pay \$ 100 to State Restitution Fund (\$100 minimum). Jah
- ☐ Pay fine of \$ \_\_\_\_\_, plus penalty assessment.
- (c) ☒ Battered Women's Shelter payment \$ 100 (\$5,000 maximum). All payments to begin on \_\_\_\_\_ (1203.097 (a) (11) P.C.). Jah
- (d) Make restitution (mandatory if probation - 1203.097(a)(13) P.C.) Jah  
To victim: (i) Pay as determined by the court through the Victim Witness Offices; or pay \$ \_\_\_\_\_  
(ii) Pay cost for counseling to the victim and/or children \$ \_\_\_\_\_
- (e) Domestic Violence Prevention Fund \$ 200 (\$200 minimum pursuant to 1203.097 (a) (5) P.C.). Jah
- (f) Batterer's Treatment Program (1 year or 52 weeks active participation required)  
(progress review every 3 months) (1203.097 (a) (6) P.C.). Jah  
☐ Alcohol/Drug Component ordered ☐ Test alcohol and drugs  
☐ Total abstinence from alcohol and drugs (blood or urine only) \_\_\_\_\_
- (g) Protective Order (per 1203.097 (a) (2) P.C.) shall not stalk, sexually abuse, harass, threaten or commit any violence upon victim or victims and the following if checked: Jah  
☒ No contact (direct or indirect) with victim (do not phone or write or have others do it)  
☒ Stay away 100 yards from victim at home, school and work. Jah
- (h) ☒ Serve 30 days in Orange County Jail. Credit 34 days plus 2 days good time/work time for a total of 6 days. Jah
- (i) ☒ Community service 8 hours (1203.097(8) P.C.). Jah
- (j) ☒ Submit your person and property, including any residence, premises, container or vehicle under your control to search and seizure at any time of the day or night by any law enforcement or probation officer with or without a warrant, and with or without reasonable cause, or reasonable suspicion. You are not to possess weapons; do not have any \_\_\_\_\_ Jah
- (j) ☐ Other: \_\_\_\_\_ Jah

**DEFENDANT:** I have personally initialed each of the boxes above and understand each and every one of the rights outlined above, and I hereby waive and give up each of them and plead guilty to the above charge. I understand that this plea may prohibit me from owning, possessing or having in my custody any firearms per 12021 P.C.

**DEFENDANTS REPRESENTING THEMSELVES IN PRO PER:**

**DEFENDANT:** I understand that there are a number of dangers and disadvantages in representing myself in this case and that an attorney could possibly help me. Nevertheless, I choose to represent myself and freely and voluntarily, and without any threats or promises made to me except as to the above sentence, enter a plea of guilty to the above charge.

DATED \_\_\_\_\_ SIGNED Juan MacCello, DEFENDANT

**DEFENDANT'S ATTORNEY:** I am the attorney of record and I have explained each of the above rights to Defendant, and having explored the facts with him and studied his possible defenses to the charge(s), I concur in his decision to waive the above rights and to enter a plea of guilty. I further stipulate that this document may be received by the Court as evidence of defendant's intelligent waiver of these rights and that it shall be filed by the Clerk as a permanent record to that waiver. I have witnessed the reading of this form by the Defendant and his initialing and signature upon it.

DATED 12-27-02 SIGNED Andrew Deerp, ATTORNEY FOR THE RECORD

**FOR THE PEOPLE**

DATED 12-27-02 SIGNED CK, DEPUTY DISTRICT ATTORNEY.

AFTER READING, INITIATING AND SIGNING, GIVE TO THE COURT ROOM CLERK.



SUPERIOR COURT OF THE STATE OF CALIFORNIA,  
COUNTY OF ORANGE

**MINUTES**

Case : 02WM10743 M A

Name : Macedo, Juan

Date of Action	Seq Nbr	Code	Text
12/27/02	1	FLDOC	Original Complaint filed on 12/27/2002 by Orange County District Attorney.
	2	FLNAM	Name filed: Macedo, Juan
	3	FLCNT	MISDEMEANOR charge of 273.5(a) PC filed as count 1. Date of violation: 12/24/2002.
	4	FLCNT	MISDEMEANOR charge of 243(e)(1) PC filed as count 2. Date of violation: 12/24/2002.
	5	FLCNT	MISDEMEANOR charge of 136.1(b)(1) PC filed as count 3. Date of violation: 12/24/2002.
	6	CLCST2	Arraignment re: In Custody assigned to 12/27/2002 at 08:30 AM in Department W4.
	7	TEXT	Systems checked. No priors found
	8	CLTRAN	Calendar Line for ARGN IC transferred from W4 on 12/27/2002 at 08:30 AM to W1 on 12/27/2002 at 08:30 AM.
	9	HHELD	Hearing held on 12/27/2002 at 08:30:00 AM in Department W1 for Arraignment.
	10	OFJUD	Officiating Judge: J. Michael Beecher, Judge
	11	OFJA	Clerk: C. L. Williamson
	12	OFBAL	Bailiff: R. D. Maison
	13	APDPP	Defendant present in Court in propria persona.
	14	APINT	Flavia Ines Manconi, Certified Spanish Interpreter, present to interpret for the defendant.
	15	APDDA	People represented by Christian Kim, Deputy District Attorney, present.
	16	APDPD	Court appoints Public Defender to represent Defendant.
	17	COECH	The Court explained the nature of the charges, available pleas, and possible punishment.
	18	PLGCT	To the Original Complaint defendant pleads GUILTY as to count(s) 1, 3.
	19	PLTXT	Plea to the Court.
	20	ADANC	Defendant knows and is aware of the nature of the charge and consequences of the plea, including but not limited to the permissible range of sentences and consequences of subsequent conviction.
	21	WVJTR	Defense waives jury trial.

SUPERIOR COURT OF THE STATE OF CALIFORNIA,  
COUNTY OF ORANGE

**MINUTES**

Case : 02WM10743 M A

Name : Macedo, Juan

Date of Action	Seq Nbr	Code	Text
12/27/02	22	WAIVES	Defendant waives the following:
	23	WVRTA	- The right to an Attorney.
	24	WVCXW	-The right to confront and cross-examine witnesses.
	25	PLFWR	Court finds defendant intelligently and voluntarily waives legal and constitutional rights to jury trial, confront and examine witnesses, and to remain silent.
	26	PLFBA	Court finds factual basis and accepts plea.
	27	WVTIM	Defendant waives statutory time for Sentencing.
	28	PRISS	No legal cause why judgment should not be pronounced and defendant having Pled Guilty to count(s) 1, 3, Imposition of sentence is suspended and defendant is placed on 3 Years INFORMAL PROBATION on the following terms and conditions:
	29	PRVNL	Violate no law.
	30	PRSRF	Pay \$100.00 Restitution Fine pursuant to Penal Code 1202.4 or Penal Code 1202.4(b).
	31	PRFDV	Pay \$200.00 Domestic Violence FEE pursuant to Penal Code 1203.097(a)(5).
	32	PRPBS	Pay \$100.00 donation to a battered woman's shelter.
	33	STALL	Payment of all monies due stayed to 04/28/2003.
	34	PRJAL	<b>Serve 30 Days Orange County Jail as to count(s) 1, 3.</b>
	35	JLCTS	<b>Credit for time served: 4 actual, 2 conduct, totaling 6 days.</b>
	36	PRSVC	Complete 8 Hours 1 Days Community Service, Cal Trans, or Physical Labor as directed by program as to count(s) 1.
	37	PRPRG	Attend and complete Batterers Treatment Program.
	38	CLSET2	<b>Hearing re: Proof of enrollment set on 03/27/2003 at 08:30 AM in Judicial Assistant - West.</b>
	39	PRNOC	Do not have any contact with victim directly, indirectly, or through a third party except by an Attorney of Record.
	40	PRYRD	Do not go within 100 yards of victim, their home, work, or children's school.
	41	FIDVO	Protective Order signed, served on defendant, and filed.
	42	PRCTO	Comply with all terms of Protective Order and any Family Law Court Orders.
	43	PRRES	Pay restitution in the amount as determined and directed by Victim Witness as to count(s) 1, 3.



SUPERIOR COURT OF THE STATE OF CALIFORNIA,  
COUNTY OF ORANGE

**MINUTES**

Case : 02WM10743 M A

Name : Macedo, Juan

Date of Action	Seq Nbr	Code	Text
12/27/02	44	PRSAS	Submit your person and property including any residence, premises, container, or vehicle under your control to search and seizure at any time of the day or night by any law enforcement or probation officer with or without a warrant, and with or without reasonable cause or reasonable suspicion.
	45	NTJAL	Notice to Sheriff issued.
03/27/03	1	HHELD	Hearing held on 03/27/2003 at 08:30 AM in Judicial Assistant - West for Hearing.
	2	OFJAS	Judicial Assistant: Sheela A. Jackson.
	3	APDNC	Defendant not present in court.
	4	PBREV	Court orders probation revoked.
	5	WAISD	Failure to Comply with Court Order warrant ordered issued for defendant. Bail set at \$15, 000.00, Mandatory Appearance.
	6	WAWSD	Failure to Comply with Court Order warrant signed by Thomas J. Borris and issued for defendant. Bail set at \$15, 000.00, Mandatory Appearance.
03/31/03	1	WFNBR	Warrant File Number 02741572 sent from AWSS for Warrant # 2018939.
06/19/03	1	FIRSS	Notice from Victim Witness filed. Victim failed to respond to inquiries.
	2	TEXT	One victim listed in crime report
03/22/10	1	COPIT	<b>Pending Items are: Count 2 has never been addressed.</b>
03/02/16	1	CPGTO	Certified Copy of Complaint, Court Docket and Tahl Form mailed to United States Probation Office - Houston, Texas - Attn: I. Walters.

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## STATE'S EXHIBITS

<u>PAGE NUMBER</u>	<u>DESCRIPTION</u>	<u>OFFER / ADMIT</u>
177	Judgment	4-77/4-77
177	Judgment	5-86/5-86

1. Copies To: Stanton

In Custody

**ORIGINAL**

2. Case No. 02-273656A

SHERIFF'S DEPARTMENT  
ORANGE COUNTY  
SANTA ANA, CALIFORNIA

2a. Citation No.

Priority: ☒ Yes ☐ No

MICHAEL S. CARONA, SHERIFF-CORONER

INITIAL CRIME REPORT

3. OFFENSE CPC 591 Injure Telephone Line				4. DATE-TIME COMMITTED Tuesday 12-24-02 / 1645			
5. WHERE COMMITTED [REDACTED] Stanton Ca 90680				6. GRID 797 J-4		7. DATE-TIME REPORTED	
8. INFORMANT Victim				9. ADDRESS-PHONE See box 11			
10. VICTIM Alvarado, Maria				11. ADDRESS-PHONE [REDACTED]			
12. BUSINESS ADDRESS-PHONE None				13. CONTACT TIME-ADDRESS Mon-Fri 0900-1700 903-2408			
14. FIRM NAME OF VICTIM				15. BUSINESS ADDRESS-PHONE			
16. VICTIM'S OCCUPATION Housewife		RACE Hisp	SEX F	AGE 20	17. TYPE OF PREMISES OR LOCATION WHERE OFFENSE WAS COMMITTED Single family residence		
COMPLETE ON ALL APPLICABLE FELONIES, MISD., SEX AND THEFTS	18. POINT OF ENTRY CRIMES AGAINST PROPERTY				22. WEAPON OR MEANS USED Feet / Mouth		
	19. INSTRUMENT OR MEANS USED				23. VICTIM'S ACTIVITY AT TIME OF OFFENSE Sitting in room		
	20. METHOD USED				24. EXACT WORDS USED BY SUSPECT None		
	21. WHERE WERE OCCUPANTS AT TIME OF OFFENSE?				25. FORCE OR METHOD USED Kicking / Biting		
	26. APPARENT MOTIVE -- TYPE PROPERTY TAKEN Bodily Injury					27. TOTAL VALUE STOLEN \$	
	28. UNIQUE OR UNUSUAL ACTIONS BY SUSPECT(S) Suspect kicked victim in the jaw and bit her on the right eye area						
	29. VEHICLE USED BY SUSPECT(S) YEAR, MAKE, BODY TYPE, COLOR, LIC. NO., AND ANY OTHER IDENTIFYING MARKS None						
	30. WITNESSES R/B RESIDENCE/BUSINESS ADDRESS-PHONE				R B		
(1) None				R B			
(2)				R B			
(3)				R B			
31. SUSPECT(S) (IF ARRESTED, NAME, ADDRESS, AND BOOKING NUMBER)						BKG. NBR. 2098913	
(1) Macedo, Juan [REDACTED] Stanton Ca. 90680						M. Hisp. 3-8-82 509 150 Blk. Bro.	
(2)						BKG. NBR.	
(3)						BKG. NBR.	
EYES	NAME	ADDRESS	SEX	RACE	DOB	HT.	WT. HAIR
32. DETAILS OF OFFENSE: EVIDENCE COLLECTED, DESCRIPTION AND VALUE OF PROPERTY TAKEN, LIST ADDITIONAL WITNESSES AND SUSPECTS							
QUAN.	ARTICLE	BRAND	SERIAL NO.	MODEL NO.	MISC. DESCRIPTION		VALUE
Injuries:							
Bruising and swelling around the right eye, reddens							
O O Sheriff's Dept							
31 DEC 02 15 20							
33. INVESTIGATING OFFICERS D. Jacobs 2308				REPORT BY D. Jacobs 2308 1545		34. DATE OF REPORT 12/25/02	
						35. APPROVED [Signature]	

I CERTIFY THIS IS A TRUE AND ACCURATE COPY OF THE ORIGINAL OF BUSINESS OR DOCUMENTS ON FILE IN THIS DEPARTMENT

ATTEST  
SANDRA HUTCHENS, Sheriff-Coroner  
COUNTY OF ORANGE  
STATE OF CALIFORNIA

BY: JAGUILAR  
KIRK WILKERSON, DIRECTOR  
CUSTODIAN OF RECORDS

DATE: 10-15-15

PENGAD 800-331-6889

STATE'S  
EXHIBIT  
177



## ORANGE COUNTY SHERIFF'S DEPARTMENT

## DOMESTIC VIOLENCE SUPPLEMENTAL 13700 P.C.

VICTIM'S NAME (L, F, M)

ALVARADO, MARIA

DATE OF BIRTH

CASE NUMBER

62-273656

OFFENSE

CPC 273.5

I responded to a call of DOMESTIC VIOLENCE

at

STANTON CA

I found the victim ALVARADO MARIA

## VICTIM

The victim displayed the following emotional and physical conditions:

- |  |   |
|--|---|
| <input type="checkbox"/> ANGRY             | <input type="checkbox"/> COMP OF PAIN   |
| <input type="checkbox"/> APOLOGETIC        | <input type="checkbox"/> BRUISE(S)      |
| <input checked="" type="checkbox"/> CRYING | <input type="checkbox"/> ABRASION(S)    |
| <input type="checkbox"/> FEARFUL           | <input type="checkbox"/> MINOR CUT(S)   |
| <input type="checkbox"/> HYSTERICAL        | <input type="checkbox"/> LACERATION(S)  |
| <input type="checkbox"/> CALM              | <input type="checkbox"/> FRACTURE(S)    |
| <input checked="" type="checkbox"/> AFRAID | <input type="checkbox"/> CONCUSSION(S)  |
| <input type="checkbox"/> IRRATIONAL        | <input type="checkbox"/> OTHER: EXPLAIN |
| <input type="checkbox"/> NERVOUS           |   |
| <input type="checkbox"/> THREATENING       | ALWAYS explain                          |
| <input type="checkbox"/> OTHER: EXPLAIN    | OPPOSITES in narrative                  |

SEE ICR FOR DETAILS

## SUSPECT

- |  |   |
|--|---|
| <input type="checkbox"/> ANGRY             | <input type="checkbox"/> COMP OF PAIN   |
| <input type="checkbox"/> APOLOGETIC        | <input type="checkbox"/> BRUISE(S)      |
| <input checked="" type="checkbox"/> CRYING | <input type="checkbox"/> ABRASION(S)    |
| <input type="checkbox"/> FEARFUL           | <input type="checkbox"/> MINOR CUT(S)   |
| <input type="checkbox"/> HYSTERICAL        | <input type="checkbox"/> LACERATION(S)  |
| <input checked="" type="checkbox"/> CALM   | <input type="checkbox"/> FRACTURE(S)    |
| <input type="checkbox"/> AFRAID            | <input type="checkbox"/> CONCUSSION(S)  |
| <input type="checkbox"/> IRRATIONAL        | <input type="checkbox"/> OTHER: EXPLAIN |
| <input type="checkbox"/> NERVOUS           |   |
| <input type="checkbox"/> THREATENING       | ALWAYS explain                          |
| <input type="checkbox"/> OTHER: EXPLAIN    | OPPOSITES in narrative                  |

SUSPECT'S NAME

MACEDO JUAN

DATE OF BIRTH

8-3-82

HOME ADDRESS

[REDACTED] STANTON CA 90680

TELEPHONE

714 903 2408

WORK ADDRESS

UNEMPLOYED

☐ CONTINUED

## RELATIONSHIP BETWEEN VICTIM AND SUSPECT

MARK ALL THAT APPLY

- |  |
|--|
| <input checked="" type="checkbox"/> SPOUSE                 |
| <input type="checkbox"/> FORMER SPOUSE                     |
| <input type="checkbox"/> COHABITANTS                       |
| <input type="checkbox"/> FORMER COHABITANTS                |
| <input type="checkbox"/> DATING/ENGAGED                    |
| <input type="checkbox"/> FORMER DATING                     |
| <input type="checkbox"/> SAME SEX                          |
| <input type="checkbox"/> EMANCIPATED MINOR                 |
| <input type="checkbox"/> PARENT OF CHILD FROM RELATIONSHIP |

LENGTH OF RELATIONSHIP

2 YEAR(S) MONTH(S)

IF APPLICABLE,  
DATE RELATIONSHIP ENDED:

PRIOR HISTORY OF DOMESTIC VIOLENCE?

☐ YES☒ NO

PRIOR HISTORY OF VIOLENCE DOCUMENTED?

☐ YES☒ NO

NUMBER OF PRIOR INCIDENTS:

☒ MINOR☒ SERIOUS

CASE NUMBER (S)

INVESTIGATING AGENCY:

## MEDICAL TREATMENT

- |  |
|--|
| <input type="checkbox"/> NONE                            |
| <input checked="" type="checkbox"/> WILL SEEK OWN DOCTOR |
| <input type="checkbox"/> FIRST AID                       |
| <input type="checkbox"/> PARAMEDICS                      |
| <input type="checkbox"/> HOSPITAL                        |
| <input type="checkbox"/> REFUSED MEDICAL AID             |

PARAMEDICS AT SCENE: ☐ YES ☒ NO

UNIT NUMBER:

NAME(S) ID#:

HOSPITAL:

ATTENDING PHYSICIAN (S):

## EVIDENCE COLLECTED:

FROM: ☐ Crime Scene ☐ Hospital ☐ Other: ExplainPHOTOS: ☒ Yes ☐ No Number:TYPE: ☐ 35mm ☐ Polaroid

TAKEN BY: SHERIFF'S I.D.

DESCRIBE ALL PHOTOGRAPHS

- |                               |   |
|-------------------------------|---|
| Photos of victim's injuries:  | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| Photos of suspect's injuries: | <input type="checkbox"/> Yes <input type="checkbox"/> No            |
| Weapon used during incident   | <input type="checkbox"/> Yes <input type="checkbox"/> No            |

Type of weapon used: FEET / MOUTH

Weapon(s) impounded: ☐ Yes ☐ NoFirearm(s) impounded for safety: ☐ Yes ☐ No

EVIDENCE BOOKED AT:

## DESCRIBE ALL EVIDENCE AND DISPOSITION

PHOTOS TAKEN BY OCSD I.D.  
UNITOC Sheriff's Dept  
Support Services

31 DEC 02 15

ORIGIN / CRIME DESCRIPTION

EVIDENCE

REPORTING OFFICER

D JACOBS

ID NUMBER

2308

DATE &amp; TIME

12-25-02

APPROVED BY:

[Signature]



02-273656

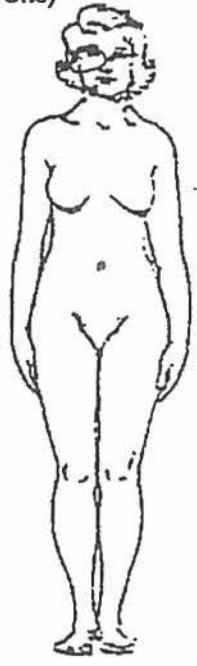
WITNESSES	WITNESSES PRESENT DURING DOMESTIC VIOLENCE?	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO
	STATEMENT(S) TAKEN?	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO
	CHILDREN PRESENT DURING DOMESTIC VIOLENCE?	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
	STATEMENT(S)?	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO

RESTRAINING ORDERS: ☐ YES ☒ NO  
☐ CURRENT ☐ EXPIRED  
TYPE: ☐ EMERGENCY ☐ TEMPORARY ☐ PERMANENT  
ISSUING COURT: \_\_\_\_\_  
ORDER OR DOCKET NUMBER: \_\_\_\_\_


VICTIM GIVEN:  
☐ DOMESTIC VIOLENCE INFORMATION SHEET  
☒ OCSD CASE NUMBER  
☐ DOMESTIC VIOLENCE UNIT PHONE NUMBER

IS THE VICTIM AT A TEMPORARY ADDRESS? ☐ Y/N. If YES, attach a memo with the address and phone number.

V. S. (Circle One)

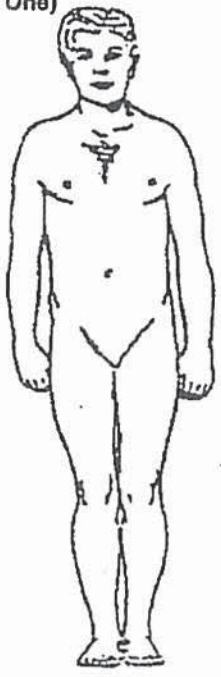


HT. 504  
WT. 125

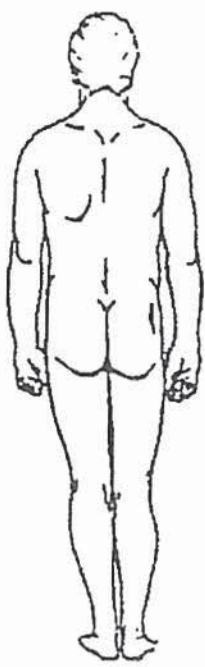


PLEASE DRAW  
ON DIAGRAM(S)  
THE LOCATION  
OF ANY  
INJURIES.

V. S. (Circle One)



HT. 509  
WT. 150



1. Copies To: Stanton

In Custody

**ORIGINAL**  
SHERIFF'S DEPARTMENT  
ORANGE COUNTY  
SANTA ANA, CALIFORNIA

2. Case No. 02-273656

2a. Citation No.

Priority: ☒ Yes ☐ No

MICHAEL S. CARONA, SHERIFF-CORONER

INITIAL CRIME REPORT

3. OFFENSE CPC 273.5 Spousal Battery				4. DATE-TIME COMMITTED Tuesday 12-24-02 / 1645				
5. WHERE COMMITTED [REDACTED] Stanton Ca 90680				6. GRID 797 J-4		7. DATE-TIME REPORTED		
8. INFORMANT Victim				9. ADDRESS-PHONE See box 11				
10. VICTIM Alvarado, Maria				11. ADDRESS-PHONE [REDACTED]				
12. BUSINESS ADDRESS-PHONE None				13. CONTACT TIME-ADDRESS Mon-Fri 0900-1700 903-2408				
14. FIRM NAME OF VICTIM				15. BUSINESS ADDRESS-PHONE				
16. VICTIM'S OCCUPATION Housewife				17. TYPE OF PREMISES OR LOCATION WHERE OFFENSE WAS COMMITTED Single family residence				
18. POINT OF ENTRY CRIMES AGAINST PROPERTY				22. WEAPON OR MEANS USED Feet / Mouth				
19. INSTRUMENT OR MEANS USED				23. VICTIM'S ACTIVITY AT TIME OF OFFENSE Sitting in room				
20. METHOD USED				24. EXACT WORDS USED BY SUSPECT None				
21. WHERE WERE OCCUPANTS AT TIME OF OFFENSE?				25. FORCE OR METHOD USED Kicking / Biting				
26. APPARENT MOTIVE - TYPE PROPERTY TAKEN Bodily Injury				27. TOTAL VALUE STOLEN \$				
28. UNIQUE OR UNUSUAL ACTIONS BY SUSPECT(S) Suspect kicked victim in the jaw and bit her on the right eye area								
29. VEHICLE USED BY SUSPECT(S) YEAR, MAKE, BODY TYPE, COLOR, LIC. NO., AND ANY OTHER IDENTIFYING MARKS None								
30. WITNESSES R/B RESIDENCE/BUSINESS ADDRESS-PHONE (1) None				R B				
(2)				R B				
(3)				R B				
31. SUSPECT(S) (IF ARRESTED, NAME, ADDRESS, AND BOOKING NUMBER) (1) Macedo, Juan [REDACTED] Stanton Ca. 90680				BKG. NBR. 2098913 M. Hisp. 3-8-82 509 150 Blk. Bro.				
(2)				BKG. NBR.				
(3)				BKG. NBR.				
EYES	NAME	ADDRESS	SEX	RACE	DOB	HT.	WT.	HAIR
32. DETAILS OF OFFENSE: EVIDENCE COLLECTED, DESCRIPTION AND VALUE OF PROPERTY TAKEN, LIST ADDITIONAL WITNESSES AND SUSPECTS								
QUAN.	ARTICLE	BRAND	SERIAL NO.	MODEL NO.	MISC. DESCRIPTION	VALUE		
Injuries:  Bruising and swelling around the right eye.								
33. INVESTIGATING OFFICERS D. Jacobs 2308			REPORT BY D. Jacobs 2308 1545			34. DATE OF REPORT 12/25/02		35. APPROVED [Signature]



1. COPIES TO:  
Stanton

2. CASE NO. 02-273656

SHERIFF'S DEPARTMENT  
ORANGE COUNTY  
SANTA ANA, CALIFORNIA

MICHAEL S. CARONA, SHERIFF-CORONER

REPORT CONTINUATION

On Tuesday 12-24-02 at about 1700 I was dispatched to [REDACTED] reference a Spousal Battery report. Upon my arrival I spoke to Maria Alvarado who told me the following statement.

She has been married to her husband Juan Macedo for two years and have one child together. At about 1300 Juan began drinking alcohol. At about 1645 hours Juan got angry with her because there was no salt in the salt shaker. Maria stated that Juan began yelling at her. She went into the bedroom to call the police. Juan walked into the bedroom and kicked her in the jaw as she sat on the bed. Juan then bit her on the right side of her face just below her eye. She stated that Juan threw the phone and broke it after she was able to call 911 for help.

I saw that Maria had swelling and bruising to the right side of her face just below her right eye. Juan was transported to the Intake Release Center where he was booked for CPC 273.5 Spousal Battery and CPC 591 Injure Telephone Lines. Sheriff's I.D. was requested to respond and take photos of Maria's injuries.

O C Sheriff's Dept  
Support Services

31 DEC 02 15 20

33. INVESTIGATING OFFICERS	REPORT BY	DATE OF REPORT	APPROVED
D. Jacobs 2308	D. Jacobs 2308 1545	12/25/02	

### **Automated Certificate of eService**

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Bridget Holloway  
Bar No. 24025227  
holloway\_bridget@dao.hctx.net  
Envelope ID: 51713054  
Status as of 3/23/2021 9:20 AM CST

Associated Case Party: Juan Macedo

Name	BarNumber	Email	TimestampSubmitted	Status
Miranda Meador	24047674	miranda.meador@pdo.hctx.net	3/22/2021 10:51:47 PM	SENT

#### Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Stacey Soule	24031632	information@spa.texas.gov	3/22/2021 10:51:47 PM	SENT